SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

October Term, [redacted] 1970

No. [redacted] 63

GROVE PRESS, INC., HOWARD WAGONHEIM & 5 WEST AMUSEMENT CO., INC.,

Appellants,

v.

MARYLAND STATE BOARD OF CENSORS,

Appellee,

On Appeal from the Court of Appeals of Maryland

MOTION FOR LEAVE TO FILE A BRIEF WITH BRIEF ANNEXED AS *AMICUS CURIAE* FOR INTERNATIONAL FILM IMPORTERS & DISTRIBUTORS OF AMERICA, INC.

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IN THE

Supreme Court of the United States

October Term, 1969

No. 905

GROVE PRESS, INC., HOWARD WAGONHEIM & 5 WEST AMUSEMENT CO., INC.,

Appellants,

v.

MARYLAND STATE BOARD OF CENSORS,

Appellees.

On Appeal from the Court of Appeals of Maryland

MOTION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

The International Film Importers and Distributors Association of America, Inc. (hereinafter referred to as IFIDA), hereby respectfully moves for leave to file a brief annexed hereto as *Amicus Curiae* in this case. Petitioners have consented to the filing of this *Amicus* brief. Respondents have refused to consent to the filing.

The IFIDA, an *Amicus Curiae* herein, is a membership corporation organized under the laws of the State of New

York in 1959. It consists of approximately 50 members comprising the vast majority of importers and independent national distributors of motion pictures from abroad.

The IFIDA has a substantial interest in the determination of the issues presented by this case. The exhibition of motion pictures has since long been held to be a form of communication to be accorded the First Amendment's protection. The ruling of the lower courts in this case are directly contrary to the interest of the IFIDA's membership in particular, and to the general viewing public as well. In our *Amicus* brief, we will consider the First Amendment issue and urge this Court to reverse the lower ruling.

It is, therefore, respectfully requested that the IFIDA be granted leave to file a brief *Amicus Curiae*.

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BRIEF—*AMICUS CURIAE* FOR INTERNATIONAL FILM IMPORTERS & DISTRIBUTORS OF AMERICA, INC.

Statement

This brief *Amicus Curiae* is submitted on behalf of the International Film Importers & Distributors of America, Inc. (hereinafter called "IFIDA"). This organization represents a vast majority of the importers and national independent distributors of films from abroad in the United States. Among its stated purposes is to promote and stimulate public interest and understanding of foreign-made motion picture films . . . to encourage the production of outstanding foreign-made motion picture films. These motion pictures represent the expressions and ideas of film makers from all over the globe. Motion pictures in general are a vital form for the communication of ideas, protected by our First Amendment's freedoms. Motion pictures from abroad have an important message for America: they tell of the customs, the cultures, the hopes and the dreams of peoples of other lands. While it is true that some of the ideas and expressions contained in these films may be contrary to the concepts of some Americans, it is the essence of democracy that they should not be suppressed, but instead reach the market place of free ideas.

The Maryland statute before this Court denies Appellant's film, and films similarly situated, this opportunity.

Argument

It is our view that Appellant herein has adequately set forth the facts in this case, as well as the issues raised thereby. We propose to urge this court to invalidate Maryland censorship law as an invalid infringement on First Amendment freedoms.

If Maryland's censorship statute were to include licensing and censorship of *any* other medium, we submit there would not be the slightest doubt, even in the court below, that such a scheme runs afoul of the letter and spirit of our Constitution. Such is the import of *Near* v. *Minnesota*, 283 U.S. 697.

In analyzing human nature, Alexander Pope once remarked:

> "To observations which ourselves we make we grow more partial for the observer's sake."

May the same not be said both as concerns censor's judgment in this case and the views the Appellee takes regarding validity of the Maryland statute? For Appellee, while citing the landmark case of *Burstyn* v. *Wilson*, 343 U.S. 495, conveniently omits a vital portion of the rule in that case:

> "Nor does it follow that motion pictures are necessarily subject to the precise rules governing of any other particular method of expression. Each method tends to present its own peculiar problems".

343 U.S. at 502-503, See Brief of Appellee, page 13.

We complete the quotation:

> "But the basic principles of freedom of speech and the press, like the First Amendment's command, do not vary. Those principles, as they have frequently been enunciated by this court, make freedom of expression the rule".

Also see *Times Film Corporation* v. *City of Chicago*, 365 U.S. 463, Brief *Amicus* of Motion Picture Association of America, at pages 18-24.

The potentially chilling effect on the dissemination of constitutionally protected motion pictures by the constant presence of a censor board, makes the continued existence of Maryland's statute a thorn in the side of our protected freedoms. We urge this Court to invalidate the statute in question on its face.

We also support Appellant's argument that the court below should have reversed the judgment on the summary authority of *Redrup* v. *New York*, 386 U.S. 767 and it is submitted, further, that the Maryland statute is an invalid denial of Appellant's rights under the equal protection clause. *Yick Wo* v. *Hopkins*, 118 U.S. 356.

IFIDA does not inspect or screen its members' films, and therefore takes no view as to the presence or absence of social values in the film "I Am Curious Yellow". Many a student of human behavior has remarked, however, that "Beauty is in the eye of the beholder". See Lew Wallace and also David Hume as quoted in "Bartlett's Familiar Quotations", 14th Edition, 729 a. and 434 b. respectively. May we not say the same as regards obscenity? One man's

obscenity is, has been and always will be another man's beauty. By case after case, following *Roth* v. *United States*, 354 U.S. 476, this Court has sought without success to define that which it regards as unprotectable by virtue of obscenity.

We submit that the search has proved unavailing. It is not just some speech, or even valuable speech, that must be protected by the First Amendment but all speech regardless of value. The adult American population should be free to choose its books, its magazines or its newspapers, its motion pictures as well as its other media, offensive or inoffensive, in its own way, without the aid of counsel of government. In the long run, this is the only effective way and as appeals to us, the only constitutional way to uphold the spirit of our First Amendment freedoms.

Consequently, we support Appellant's request to extend the rule of *Stanley* v. *Georgia*, 394 U.S. 557, to the exhibition of motion pictures in theatres, subject to the safeguards advanced in Appellant's brief, and to the extent necessary to overrule *Roth* v. *United States, supra.* We submit that the effect of censorship is no less chilling, be it covered by a licensing law or a post exhibition statute. Ultimately, no adult is forced to attend films in a motion picture theatre charging admission thereto, should he elect to stay away.

CONCLUSION

For the reasons stated above, it is respectfully urged that this Court reverse the judgment below.

Respectfully submitted,

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